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FEDERAL COMMUNICATIONS COMMISSION

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FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:)	MM DOCKET No.:	93-135
)		
THE PETROLEUM V. NASBY)	File Nos.	BRH-890601VB
CORPORATION)		BTCH-921019HX
For Renewal of License of)		BTCH-921019HY
Station WSWR (FM),)		
Shelby, Ohio)		
)		
THE PETROLEUM V. NASBY)		
CORPORATION)		
For Transfer of Control of)		
Station WSWR (FM),)		
Shelby, Ohio)		

Volume: 3
Pages: 99 through 107
Place: Washington, D.C.
Date: April 22, 1996

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SECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Shelby, Ohio)		

Suite 201
FCC Building
2000 L Street, N.W.
Washington, D.C.

Monday,
April 22, 1996

The parties met, pursuant to the notice of the
Judge, at 10:00 a.m.

BEFORE: HON. EDWARD LUTON
Administrative Law Judge

APPEARANCES:

On behalf of Mass Media Bureau:

JAMES SHOOK, ESQ.
CATHERINE WITHERS, ESQ.
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APPEARANCES CONTINUED:

On Behalf of The Petroleum V. Nasby Corporation:

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P R O C E E D I N G S

10:10 a.m.

JUDGE LUTON: Good morning. Mr. Reporter, can we start now?

THE COURT REPORTER: Yes.

JUDGE LUTON: Appearances please.

MS. FARHAT: Ann C. Farhat of the firm of Bechtel & Cole, Chartered on behalf of Petroleum V. Nasby Corporation. Good morning, Your Honor.

JUDGE LUTON: Good morning.

MR. SHOOK: James Shook and Catherine Withers on behalf of the Chief Mass Media Bureau.

JUDGE LUTON: Good morning.

MR. SHOOK: Good morning.

JUDGE LUTON: Okay. The Commission here is concerned with the question of whether Mr. Root will have continuing influence on Nasby in the event this application for renewal is granted. It states it that way at first. And later on, it states its concern this way: "The record should be supplemented as a circumstance of law of the 1989 transfers and as through each relationship with his family with respect to Nasby then, now and in the future." I don't know that these two statements are the same. One seems to be a bit broader than the other.

But in any event, I think the parties have had

1 enough time to look at this and decide what shape the trial
2 on the remand shall take. Consequently, I'm going to
3 schedule a hearing and some procedural dates. And we will
4 call a hearing, I hope on June the 25th. I'm going to ask
5 each side to let the other know what witnesses there are
6 going to be by June the 18th and that written testimony,
7 which will constitute the exhibits in the case, be exchanged
8 by May 31st.

9 Now, that's the schedule that I just drew up
10 without any particular thought. If it isn't satisfactory to
11 each of the parties, let me know and we can adjust. But if
12 that looks okay, we'll go with those dates. What do you
13 think?

14 MS. FARHAT: Well, Your Honor, generally I don't
15 have a problem with the dates. I do have one. I have to
16 move from where I've been living for the last 13 years by
17 May 31st. But I think I can still work around this.

18 Just for the record, Mr. Shook and I and Ms.
19 Withers have discussed a potential way to possibly -- and I
20 don't want to speak out of turn; you can address this, too -
21 - possibly to resolve this without the need for a hearing.
22 We've talked about some information they would like. And if
23 it meets their concerns, that it's possible, we would then
24 look to you to possibly submit some form of motion or record
25 evidence and some form of summary decision matter for your

1 review. But we haven't really talked about any particular
2 dates by which that could all be done.

3 But one of the things we talked about was just
4 to -- for instance, I provided in the past corporate records
5 of all the annual meetings. I would provide things since
6 the hearing date forward that haven't been provided. And
7 they potentially may wish to speak to some employees of the
8 station and things of that nature. And if those concerns
9 were met, then we were going to try to put together some
10 form of document support for your review, hopefully to
11 obviate the need for a hearing. But other than that, I
12 can -- I think I can deal with this. I'll just work around
13 my private schedule.

14 JUDGE LUTON: Well, good. I'm glad to know that
15 the parties are at least thinking about the possibility of
16 written submissions as a way of handling this case.
17 Incidentally, if we were to have witnesses in the case, would
18 Mr. Root be available?

19 MS. FARHAT: I suspect so, Your Honor. It's my
20 understanding he's out of prison.

21 JUDGE LUTON: Okay. I didn't know that. That's
22 why I asked.

23 MS. FARHAT: Yes.

24 JUDGE LUTON: But -- however -- well, written
25 submissions, I would certainly receive them, take a look at

1 them. And if I felt that in spite of what had been
2 submitted we needed to go to hearings, I'd need to hear live
3 witnesses and see them as they testified. I would let the
4 parties know and then we would have a hearing in the regular
5 form. But I don't say that to discourage the parties from
6 attempting to work things out by way of writings anyhow. If
7 that can work, that would be fine. It would please me,
8 satisfy me.

9 Mr. Shook, do you wish to say anything on behalf
10 of the Bureau with respect to this?

11 MR. SHOOK: Just to say that the Bureau concurs
12 with what Mr. Farhat said in that we have discussed the
13 matter informally. We would hope to resolve this matter by
14 way of summary decision if it's at all possible. We have
15 discussed generally what it is that we would like to see in
16 order to be assured that Mr. Root has not been, is not now
17 and will not be in the picture in so far as the operations
18 of Nasby are concerned.

19 JUDGE LUTON: All right. Well, if that can be
20 done, that would be -- would be just fine. These
21 discussions have been preliminary or they haven't progressed
22 very far. I understand that. Would the setting and the
23 adoption of this schedule that I stated hamper in any way
24 the parties' ability to at least continue their discussions
25 and their efforts to work things out? I mean is there

1 enough time here so that you will know, for example, by May
2 31 whether or not -- we have to know in advance of May 31
3 whether or not you're going to put together a motion for
4 summary decision or whether you're going to exchange your
5 exhibits by that date. Is that enough time?

6 MR. SHOOK: Well, obviously we would have to move
7 quickly. We can't waste much time in terms of deciding what
8 it is that we want and also in terms of deciding what would
9 be acceptable assurance to us.

10 JUDGE LUTON: Do you think you can have it done by
11 May 31 or prior to May 31, or does this need to be adjusted?
12 It's hard to say, I realize, because you haven't gotten
13 anywhere. The idea apparently is new to move for summary
14 decision.

15 MS. FARHAT: Well, Your Honor, may I say something
16 in that respect? I don't think it would normally be a
17 problem to know if we were filing a motion for summary
18 decision by the 31st or proceeding with the hearing date or
19 proceeding with the written testimony. I think, though, if
20 we went the motion for summary decision route, it may be --
21 I think I would need more time because it would be in almost
22 the form of writing your findings and conclusions which
23 would mean to me like two projects that would be due by the
24 31st. That would be the only thing that potentially would
25 need more time. But it also I guess depends on how much

1 time would be spent in trying to -- I don't know how many
2 witnesses you'd want to talk to, so --

3 MR. SHOOK: But would Your Honor be amenable to
4 this? If a motion for summary decision, say, were submitted
5 by the 20th of May, we would probably have a separate motion
6 to have the dates postponed.

7 JUDGE LUTON: Or I could do that on my own.

8 MR. SHOOK: Yes.

9 JUDGE LUTON: I could do that on my own if a
10 motion is filed. I'd just suspend the schedule and take a
11 look at the motion and see where we are. And --

12 MR. SHOOK: I think that would work and if we --

13 JUDGE LUTON: I don't see why it shouldn't.

14 MR. SHOOK: -- if we have a date in mind, you
15 know, say roughly the 20th of May --

16 JUDGE LUTON: Yes.

17 MS. FARHAT: Sure.

18 MR. SHOOK: -- that we could go with that. And,
19 you know, we would certainly know by then whether we were
20 going to be amenable --

21 JUDGE LUTON: Sure.

22 MR. SHOOK: -- to resolution by summary decision.

23 JUDGE LUTON: I think so.

24 MR. SHOOK: So if a motion is submitted, then at
25 that point, the schedule can be postponed.

1 JUDGE LUTON: How's that, Ms. Farhat?

2 MS. FARHAT: That's fine, Your Honor.

3 JUDGE LUTON: That sounds fine. I'll go ahead and
4 issue this order here recognizing that. I'm really kind of
5 hoping that you won't have to follow it and that we can
6 dispose of this case on papers. If that's possible, we'll
7 do it that way.

8 MR. SHOOK: There have been some ideas thrown
9 about already when this matter was in front of the review
10 board and then later in front of the Commission. There were
11 trust proposals made. And we think that it's possible that
12 those proposals are a good starting point.

13 JUDGE LUTON: Good, good. Okay. Hearings don't
14 seem to be much in favor around here anymore. Anyway, so if
15 we can avoid one here, let's do it. Is there anything else?

16 MS. FARHAT: Not that I can think of.

17 JUDGE LUTON: All right. Then I'll go ahead and
18 issue this order. And as I say, I hope the parties are able
19 to submit motions for summary decision by the 20th of May or
20 thereabouts; certainly, before the dates become effective
21 and then we'll see where we are. Thank you very much.

22 MR. SHOOK: Thank you.

23 (Whereupon, at 10:10 a.m. on Monday, April 22,
24 1996, the hearing adjourned.)

25 //

REPORTER'S CERTIFICATE

FCC DOCKET NO.: 93-135
CASE TITLE: THE PETROLEUM V. NASBY CORPORATION
HEARING DATE: April 22, 1996
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 4/22/96

Phil Raptis
Official Reporter
Heritage Reporting Corporation
1220 "L" Street, N.W.
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Phil Raptis

TRANSCRIBER'S CERTIFICATE

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 5/1/96

Bonnie J. Niemann
Official Transcriber
Heritage Reporting Corporation
Bonnie J. Niemann

PROOFREADER'S CERTIFICATE

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 5/1/96

Barbara Blossom
Official Proofreader
Heritage Reporting Corporation
Barbara Blossom